the father, the defendant, was riding. The latter made no objection or endeavor to control his son; and, if he did not, it was a presumption which a jury might well make, and which I think they were bound to notice, that he assented to that which was done in the management of the instrument (team) which did the injury, and therefore, per consequence, was answerable, provided the result was not an unavoidable accident, which the jury have found was not the case, the question of negligence or wilfulness having been submitted to them." See, also, *Lashbrook* v. *Patten*, 1 Duv. 316; *Dunks* v. *Grey*, 3 Fed. Rep. 862, and cases therein cited.

The modern rule of the civil law in European countries is said to make every person responsible for injuries caused by the acts of persons and things under his dominion; but a father incurs no responsibility for the act of his minor child, if he can prove that he was not able to prevent the act which gives rise to the liability: Schouler Dom. Rel., sect. 263; Civ. Code France, art. 1384. The same principle has been adopted in Louisiana; *Chambaud* v. *Mayo*, 19 La. (O. S.) 414. For the rules of the Roman Civil Code, see Gaius, 6 iv., § 75; Inst. Lib. iv. tit. viii.; Hunter's Roman Law (London ed.) (1876) p. 51. Upon the whole, though the principal case goes rather farther than any common-law case we have seen, it seems to be based upon sound principles, and to establish a salutary doctrine.

MARSHALL D. EWELL.

ABSTRACTS OF RECENT DECISIONS.

SUPREME COURT OF GEORGIA.[1]

SUPREME JUDICIAL COURT OF MASSACHUSETTS.[2]

SUPREME COURT OF MISSOURI.[3]

SUPREME COURT OF RHODE ISLAND.[4]

SUPREME COURT OF WISCONSIN.[5]

ACTION. See *Bills and Notes; Contract.*

AGENT. See *Trover.*

Proof of Authority—Canvassing Agent.—The employment of a canvassing agent for the sale of books by subscription, confers no authority to receive payment for books sold but not delivered by him, nor ever in his possession: *Butler* v. *Dorman*, 68 Mo. 298, followed. *Chambers* v. *Short*, 79 Mo.

ASSIGNMENT. See *Partnership.*

Invalidity—Conveyance of future Wages.—An assignment of wages to

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[1] From J. H. Lumpkin, Esq., Reporter; the cases will probably appear in 59 or 60 Ga. Rep.

[2] From John Lathrop, Esq., Reporter; to appear in 136 Mass Rep.

[3] From T. K. Skinker, Esq., Reporter; to appear in 79 Mo. Rep.

[4] From Arnold Green, Esq., Reporter; to appear in 14 R. I. Rep.

[5] From T. K. Conover, Reporter; the cases will probably appear in 70 or 71 Wis. Rep.

fall due from any future employer, with whom no contract nor engagement for employment exists at the time of the assignment is void. Such wages are a mere possibility, without conjoined interest and not assignable: *Kennedy* v. *Tiernay*, 14 R. I.

Invalidity—Reservation of Property exempt by Law.—An assignment for the benefit of creditors of all the property of the assignor, "saving and excepting * * * all such articles of household furniture and other effects as are exempt by law from seizure and sale on execution," is void for uncertainty, and because such reservation is fraudulent as giving to the assignor a right at any time to withdraw by selection a part of the goods assigned: *Goll* v. *Hubbell*, 59 or 60 Wis.

ATTACHMENT.

Affidavit—Sufficiency of.—An affidavit for an attachment stating that the defendant has disposed of or assigned, &c., "his property or any part thereof," or is about to do so, with intent, &c., is insufficient. Perjury could not be assigned thereon: *Goodyear Rubber Co.* v. *Knapp*, 59 or 60 Wis.

BILLS AND NOTES. See *Surety*.

Unaccepted Draft—Suit on.—Where a draft was drawn and endorsed by the drawer and placed in the hands of the payee, who was also the drawee, but was never accepted by him, it was, in legal effect, a promissory note, and the payee could bring suit on it as such against the drawer: *De Vaughn* v. *Hangabook*, 70 or 71 Ga.

Endorsement for Collection—Notice to subsequent holders—Action against party collecting.—A bank held a draft payable to the order of its cashier. He made the following endorsement upon it: "Pay W. H. Patterson, Cashier, or order, for collection, for account of First National Bank, Lynchburg, Va., Allen W. Talley, Cashier." The endorsee made the following endorsement upon the draft: "Pay to John A. Davis, Agent, or order, for account of Citizens' Bank of Georgia, Atlanta, Ga. W. H. Patterson, Cashier." This was delivered to Davis, the agent of the Central Railroad. The Citizens' Bank failed; Davis collected the draft, and the Central Railroad refused to pay the amount to the original payee of it because the Citizens' Bank had failed, and being in debt to the railroad, the latter had given it credit for the amount collected. *Held*, that the qualified endorsement by the cashier of the first bank, directing payment to be made to Patterson, Cashier of the Citizens' Bank, or order, for collection, for account of First National Bank of Lynchburg, Va., was nothing more than a warrant of attorney authorizing the endorsee to collect the amount due on the draft for the payee. It conveyed no title except for that purpose, and was notice to all persons subsequently dealing with it that the payee had not parted with the title or intended to transfer the ownership of the proceeds to another: *Central Railroad* v. *First Nat. Bank of Lynchburg*, 70 or 71 Ga.

When the second endorsee (the Central Railroad) received the money from the drawees, it had received that which belonged to the original payee, and this put them in privity with such payee to such an extent

that, upon failure to pay on demand, an action for money had and received would lie: *Id.*

The reception by one of money which belongs to another, and a demand by that other, makes all the privity necessary to maintain an action for money had and received: *Id.*

Common Carrier.

Contracts for Exemption from Liability—Negligence—Duty as to Providing Facilities for Transportation.—A contract by which a common carrier undertakes to relieve himself of all liability for damages occasioned by any delay in transportation, and to impose them upon the shipper, will be effectual to protect the carrier only against the consequences of delays not caused by his own negligence: *Dawson* v. *The Chicago & Alton Railroad Co.*, 79 Mo.

It is the duty of a common carrier to provide sufficient facilities and means of transportation for all freight which it should reasonably expect will be offered, but it is not bound to provide in advance for extraordinary occasions, nor for an unusual influx of business which is not reasonably to be expected: *Id.*

If a common carrier receive property for transportation without any agreement to the contrary, he thereby undertakes to carry and deliver it within a reasonable time, regardless of any extraordinary or unexpected pressure of business upon him: *Id.*

Constitutional Law.

Taking of Land—Changing Course of Stream.—By the construction of a ditch for the purpose of preserving a highway, the waters of a river were diverted from one part of the land of a riparian owner and thrown upon another part thereof in such a way as to change the condition and cut away a portion of the bank. *Held*, that there was a taking of his land within the meaning of the statute (Sects. 1236, 1237, R. S.), and that he was entitled to compensation therefor: *Smith* v. *Gould*, 59 or 60 Wis.

Statute authorizing Act judicially declared to be a Nuisance.—After the determination by this court, on a bill in equity, that the ringing of a bell on a mill, at a certain hour in the morning, was a private nuisance to the plaintiff, and after a final injunction was issued restraining such ringing, the Statute of 1883, c. 84, was passed, authorizing "manufacturers and others employing workmen, for the purpose of giving notice to such employees, to ring bells and use whistles and gongs of such size and weight, in such manner and at such hours as the board of aldermen of cities and towns may in writing designate." The selectmen of the town where the mill was situated granted a license to the owner to ring the bell on the mill at the hour at which he was prevented from ringing it by the injunction. *Held*, on a bill of review brought by the mill-owner, seeking to have the injunction modified, that the statute was constitutional, and that the bill could be maintained: *Sawyer* v. *Davis*, 136 Mass.

Retrospective Legislation—Municipal Taxation—Special Law.—Where a municipal corporation has, in the due exercise of a power conferred upon it by the legislature, assessed and levied a tax upon certain

property within its limits, the legislature may, by an act retrospective in its terms, and which takes effect before such tax becomes due, annul the assessment so made, and vest in another body the power to make the assessment for that year: *State* v. *St. L., K. C. & N. Railway Co.*, 79 Mo.

The act "to provide for the assessment and collection of taxes on bridges owned by joint stock companies, and property and franchises owned by telegraph and express companies," is not a special law within the meaning of the constitutional inhibition against the passage of local or special laws: *Id.*

CONTRACT. See *Corporation.*

Agreement to pay third Party—Variation of Writing by Parol.—By a written agreement made in the presence of C., D. agreed with P., for a valuable consideration, to pay $300 to C. out of certain moneys, before satisfying other claims therewith, and at the same time accepted an order on him by P. in favor of C. for $300 to be paid first out of said moneys. In an action by C. against D. for the $300, *held*, that C. had a vested interest in the contract to that extent, and that evidence of a parol contemporaneous agreement between P. and D., varying the terms of the written contract as to the payment of said $300, was inadmissible: *Cook* v. *Durham*, 59 or 60 Wis.

Agreement of Corporation—Distinction between Penalty and Liquidated Damages.—A sealed instrument began "An agreement made this * * * between the A. company, party of the first part, by B. agent, and C. and D. parties of the second part, herewith." * * * In the instrument the parties were spoken of merely as "the said party of the first part," and "the said parties of the second part." The testimonium clause was: "In witness whereof, the parties have hereunto affixed their hands and seals the year and day first above written." It was signed "B., agent." [L. S.] C. [L. S.] D. [L. S.] *Held*, that it was the deed of the A. company. *Bradstreet* v. *Baker*, 14 R. I.

The instrument provided that the A. company was to furnish, and C. and D. were to receive, between certain dates, five thousand tons of ice at a specified price, and that C. and D. were to pay in full in cash at the same price for all ice not received by them at the last date; such ice not received to remain the property of the C. company. C. and D. made default by not receiving the ice: *Id.*

In covenant brought against them by the A. company: *Held*, that the stipulated price for the five thousand tons was a penalty, not liquidated damages. *Held*, further, that the A. company should receive its actual damages: *Id.*

Services—Presumption—Parent and Child—Will.—Valuable services, which would, as between strangers, raise an implied promise to pay for them, when performed for a person *in loco parentis*, will not of themselves have that effect; and this whether they are performed wholly during minority or partly after majority: *Cowell* v. *Roberts*, 79 Mo.

In an action against the estate of a deceased person for services performed for him during his lifetime, *Held*, that his will making provision for the plaintiff was properly admitted in evidence as corroborative of the claim made in defence that the position of plaintiff was that of a

member of the family of the deceased, and as bearing upon the supposed undertaking to pay wages for his services: *Id.*

Public Policy—Price for Recommendation.—C. requested A. to recommend to him a builder "that you can endorse in every way responsible and reliable," who could erect a building for him cheaper than certain other builders. A. recommended B., who orally promised to pay A. a sum of money "for his trouble." B. was employed by C., erected the building, and was paid. *Held*, that A. could not maintain an action against B. on his promise: *Holcomb* v. *Weaver*, 136 Mass.

CORPORATION. See *Contract.*

Stock—Payment otherwise than in Money—Consideration—Newspaper Articles.—Payment of shares in a corporation may be made otherwise than in money: *Liebke* v. *Knapp*, 79 Mo.

It is not *ultra vires* a corporation organized for the purpose of carrying out a public enterprise, *e. g.*, the building of a bridge over the Mississippi river, to contract with the proprietor of a newspaper to have published therein statistical articles and communications favoring the project, and showing the value of the enterprise as an investment; neither is such a contract contrary to public policy: *Id.*

Certain shares of the stock of a corporation organized to construct a bridge over the Mississippi river were issued to the proprietor of a newspaper published in the city where the bridge was to be built. The consideration therefor, was the publication of articles and communications in the newspaper favoring the enterprise and pointing out its need and value to the community, and its standing as an investment. It was not contended that the consideration was inadequate. *Held*, that the stock was fully paid: *Id.*

Vesting of Stock in one Individual.—One who, by purchase or otherwise, becomes the owner of all the capital stock of a private corporation, does not thereby become the legal owner of its property, and cannot maintain replevin therefor in his own name: *Button* v. *Hoffman*, 59 or 60 Wis.

CRIMINAL LAW. See *Equity.*

DAMAGES.

Action against Sheriff for Escape.—In case against a sheriff for an escape the measure of damages is the damages actually sustained by the plaintiff; the amount of the judgment in the action wherein the escape took place being only *prima facie* evidence, open to rebuttal by the sheriff: *Sheldon* v. *Upham*, 14 R. I.

DEBTOR AND CREDITOR. See *Assignment; Equity.*

DEED.

Execution in Presence of two Witnesses.—A statute required for the validity of a deed that it should be executed in the presence of two witnesses. The deed bore the signature of one attesting witness. When it was executed a daughter of the grantor was also in and out of the room, but not as it appeared for the purpose of being a witness. *Held*,

that the deed was not executed in the presence of two witnesses: *Kenyon* v. *Segar*, 14 R. I.

Words "Subject to Mortgage"—Construction.—The words "subject to mortgage" in a conveyance of one of two parcels of land which had been mortgaged together, *Held*, not to imply that the incumbrance was to be satisfied wholly out of the parcels so conveyed, or that the grantee assumed any personal liability for the mortgaged debt: *Hall* v. *Morgan*, 79 Mo.

EQUITY. See *Partnership; Trade-Mark.*

Creditor's Bill—Necessity of Judgment.—A creditor cannot maintain a bill in equity to set aside a conveyance of his debtor as fraudulent, until his demand has been reduced to judgment: and this means a judgment in this state, not a judgment of a sister state: *Crim* v. *Walker*, 79 Mo.

Will not aid Criminal Court.—Chancery takes no part in the administration of the criminal law. It neither aids the criminal courts in the exercise of jurisdiction nor retains or obstructs them: *Pope* v. *Mayor, &c., of Savannah*, 70 or 71 Ga.

Equitable Relief for Tort—Insolvency of Wrongdoer—Fraud.—F. and H. holding notes secured by a joint mortgage on certain land and a frame dwelling house thereon, obtained a decree for foreclosure of the mortgage, sale of the property and *pro rata* application of the proceeds to the payment of their demands. On the eve of the sale, which took place under this decree, H., expecting F. to become the purchaser, and intending to defraud him, moved the house and placed it upon land of his own. F., in ignorance of what H. had done, bid and bought at the sale, the price bid being but a small part of the aggregate amount of the mortgage debts. H. was insolvent. *Held*, that ordinarily F.'s remedy against him would be an action for damages, but as this, owing to his insolvency, would be fruitless, F. might maintain a proceeding in equity to recover of H. the value of the house with interest, and to subject his land and the house to the payment thereof; and it was immaterial whether the maker of the notes was solvent or not: *Fox* v. *Hubbard*, 79 Mo.

Practice—Facts not Embraced in Pleadings—Decree.—A decree in equity must be founded upon facts consistent with and embraced within the pleadings. The prayer for general relief authorizes the court to grant any relief within these limits, but not beyond. If a state of facts not pleaded is developed at the trial, the pleadings should be amended: otherwise they cannot be made the basis of any relief: *Newham* v. *Kenton*, 79 Mo.

EVIDENCE. See *Contract.*

Mental Capacity—Expert.—On the issue of the mental capacity of a person at a particular time, a witness who is not an expert may be asked whether he noticed any difference in such person's mode of doing business at that time and at a previous time: *Commonwealth* v. *Brayman*, 136 Mass.

A witness who is not an expert may testify whether within a given time a person has failed mentally or physically; but a witness who is

not an expert cannot be asked his opinion as to the mental capacity of a person at a certain time; and this rule excludes all persons, except those having scientific training on the subject, or physicians, from giving their opinions: *Id.*

Frauds, Statute of.

Incomplete Memorandum—Parol Evidence.—When a written memorandum does not purport to be a complete expression of the entire contract, or a part only of it is reduced to writing, the matter omitted may be supplied by parol evidence: *Ellis* v. *Bray*, 79 Mo.

A memorandum was as follows: "Received of Daniel Ellis the sum of $165 to apply as purchase-money on a half interest in the following described lands, (describing them)." *Held*, that it was competent to show by parol what was the full amount of the consideration and when payable: *Id.*

Gift.

Delivery of Savings-Bank Books.—The delivery of a thing given is not necessary when the intended donee is already in possession of it, but in such a case the gift if completed and unambiguous may be effected by a simple oral declaration: *Providence Ins. for Savings* v. *Taft*, 14 R. I.

The gift of a savings-bank pass-book is in effect a gift of the deposit: *Id.*

Tillinghast v. *Wheaton*, 8 R. I., 536, affirmed: *Id.*

Deposit in Savings-Bank—Custody of Book.—H. deposited a sum of money in a savings-bank in the name of E., "subject to the order of H." A few days afterwards H. asked E. to come to his house, showed him the deposit-book, said he was going to give it to him, and delivered it temporarily into his possession. H. then said he would keep the book for E., as he had a safe, and took it and put it into the safe. On the same day, by E.'s request, H. signed and delivered to E. a paper certifying that the money was for him. H. never drew the interest upon the deposit, but allowing it to accumulate during his life, doing nothing to assert a personal ownership. E. gave seasonable notice to the bank that he should claim the money; but the bank paid the same to H.'s administrator. *Held*, in an action by E. against the bank, after the death of H., for the amount of the deposit, that the jury were authorized to find a complete gift of the money by H. to E.; and that the bank had sufficient notice thereof: *Eastman* v. *Woronoco Savings-Bank*, 136 Mass.

Guardian.

Marriage of Female Guardian—Effect of—Liability to Ward.—At common law, when a woman who was a guardian married, her letters of guardianship abated, a married woman being incapable of being a guardian. The reason for this was that married women were unable to contract or give bond and security, were not sui juris, and had become liable to the control of their husbands; but since the "married woman's act" of 1866, these reasons have been removed as to her private property, and she could be a guardian. If a woman, who was guardian of her children by her first marriage, remarried and suffered her last husband

to use, or in conjunction with him, used the land of such children, and consumed the rents, whether her letters abated upon her marriage or not, she is liable to them for such rents: *Hood* v. *Perry*, 70 or 71 Ga.

HUSBAND AND WIFE. See *Guardian.*

Gift by Wife—Conversion by Husband of Wife's Property—Creditor's Bill—Distribution of Fund.—If it be allowable at all for a married woman to make a parol gift of her separate personal property to her husband, since the Married Woman's Property Act of 1874, (Acts 1875, p. 61,) the conservation of the legislative purpose as evinced in that act, should at least incline the courts to exact the most cogent proof to establish such a gift: *Rieper* v. *Wehrmann*, 79 Mo.

A married woman whose separate personal property had, without her consent, been delivered by her bailee to her husband, and by him been converted to his own use, brought this action to subject to the payment of the indebtedness thus arising a stock of goods in the hands of her husband, and praying for the appointment of a receiver. The goods were not the identical property converted, but were purchased in part, but in part only, with the proceeds of that property. *Held*, that the equitable principal which prevents the following of a trust fund after it has changed its form and become mingled with and undistinguishable from the rest of the trustee's property, had no application, and that the action could be maintained. *Held*, also, that in such case the married woman had no lien at the outset, and did not acquire one by the institution of the action; that her position was that of a general creditor, and she was entitled to share *pro rata*, and not otherwise, with other general creditors who had come in and proved up their demands before distribution of the fund in the hands of the receiver; but that her equity was superior to that of the bailee, who was also one of the general creditors and had proved up, and that she was entitled to full satisfaction before he received anything: *Id.*

Marriage—Invalidity because af Insanity—May be proved in Collateral Action.—Where a claim or defence depends upon the question whether a person was of sound or unsound mind at the time of the marriage, it is not necessary that there should have been a decree of nullification or divorce in the lifetime of such person. The question may be made and decided in a proceeding to obtain year's support by his widow after his death; and an objection to the granting of such year's support on the ground that the deceased was of unsound mind and incapable of contracting marriage before the pretended marriage, at the time thereof, and until his death, and that the marriage was, therefore, null and void, was not demurrable: *Bell* v. *Bennett*, 70 or 71 Ga.

INSOLVENCY.

Belief of Insolvency—Reasonable Cause—Proof of Insolvency.—If facts are known to a creditor, which give him reasonable cause to believe his debtor to be insolvent, and he also knows that the debtor knows the same facts, he has reasonable cause to believe that the debtor believes himself to be insolvent, and that a payment of the debt by him is made in fraud of the laws relating to insolvency: *Cozzens* v. *Holt*, 136 Mass.

If a debtor is insolvent before making payment of his debt, and there is no evidence of a subsequent change in his financial condition, a jury will be warranted in finding that he was insolvent at the time of the payment: *Id.*

Insurance.

Fraudulent Representations by Agent—Action to recover back Premium.—If a person is induced, by the false and fraudulent representations of the agent of an insurance company, to take a policy of insurance in the company, and to pay the premium thereon, he may rescind the contract, and, in an action against such agent, recover as damages the amount of the premium so paid: *Heddon* v. *Griffin*, 136 Mass.

Judgment.

When Irregular and not Void—Motion to Vacate—When must be made.—A judgment as by default entered by the clerk upon a complaint which is imperfectly verified and fails to state a cause of action, is irregular but not *void*. For purposes of review it will be deemed the judgment of the court and an adjudication that the complaint is sufficient and duly verified: *Anderson* v. *Anderson*, 59 or 60 Wis.

A motion to set aside a judgment for a mere irregularity must be made at the same term, or, if the judgment is entered in vacation, at the next term at which the motion can be heard: *Id.*

Libel.

Newspaper Article—Evidence—Malice.—At the trial of an indictment against the publisher of a newspaper for libel, who offers evidence of the truth of the statements in the alleged libel, other publications in the same paper, if they tend to show general ill-will towards the person alleged to have been libelled, and are of such a nature as to indicate a persistent disposition of hatred towards him, or if they appear to be a part of a settled purpose to bring him into public hatred, contempt or ridicule, and are sufficiently near in time to afford a natural inference that the same state of mind existed when the alleged libellous publication was made, are admissible in evidence, although they are published subsequently to the alleged libel, and do not expressly refer to it: *Commonwealth* v. *Damon*, 136 Mass.

At the trial of an indictment against the publisher of a newspaper for libel, if the truth of the matters contained in the alleged libel, evidence of which is offered, is established, the government must show that the defendant, in a legal sense, actually participated in or authorized the publication, and that he did this with an actual malicious intention: *Id.*

At the trial of an indictment against the publisher of a newspaper for libel, who offered evidence of the truth of the statements in the alleged libel, the judge instructed the jury that, "if the truth of the article is established as claimed by the defendant, it is a perfect and complete defence, unless express malice in the publication is shown—malice in the popular sense of hatred and ill-will." *Held*, that the defendant had no ground of exception: *Id.*

Malicious Prosecution.

Final determination of Criminal Action—Entry of Nolle Prosequi—Instigation without probable cause.—Until the final determination of a

criminal action no action for the malicious prosecution thereof can be maintained: *Woodworth* v. *Mills*, 59 or 60 Wis.

The entry of a *nolle prosequi* for any reason other than some irregularity or informality in the information itself, is an end to the prosecution of that case, and, unless such *nolle* is vacated at the same term, the defendant can be further prosecuted for the same offence, if at all, only upon a new complaint, arrest, and examination: *Id.*

Such entry of a *nolle prosequi* is, therefore, such a final determination of the action that an action for its malicious prosecution may be maintained: *Id.*

If the defendant in an action for the malicious prosecution of a criminal action instigated such prosecution without probable cause, the fact that the person who, at his instigation, made the criminal complaint had probable cause to believe it to be true, is no defence: *Id.*

MORTGAGE. See *Deed; Subrogation.*

Chattels not in Esse.—A mortgage of personal property not yet *in esse*, the production of which is in the contemplation of the parties, will impose a lien in equity thereon when produced. *Wright* v. *Bircher*, 72 Mo., followed: *Sutherford* v. *Stewart*, 79 Mo.

Lien—Priority as between Mortgages executed on same Day—Intention.—Ordinarily mortgages executed the same day have equal liens on the mortgaged property, without regard to fractions of a day: *Coleman* v. *Carhart*, 70 or 71 Ga.

But where facts apparent on the faces of the mortgages show that it was the intention of the parties to give the preference to one over the others, that lien so preferred will be enforced, though all were executed the same day: *Id.*

Thus, where one of mortgages, all given on land for purchase-money, makes no reference at all to any of the others on its face, and the others on their faces refer to it as already in existence, and it, so referred to, is made to secure the note first falling due, the intention of the parties to prefer it may be gathered from these facts apparent on the face of the papers: *Id.*

NEGLIGENCE.

Contributory—Turning Cattle into Land with Knowledge that Fence had been Destroyed.—One who, knowing that a severe storm on Sunday had prostrated fences, on Monday evening turned his cattle upon unin-closed lands, without inquiry as to whether the railroad fences abutting them were uninjured, was guilty of such contributory negligence as would defeat his recovery for injuries received by such cattle on the railroad track; and such facts appearing from his own evidence a non-suit should have been granted: *Carey* v. *C., M. & St. P. Railroad Co.*, 59 or 60 Wis.

A railroad company is bound only to use ordinary diligence in repairing its fences: *Id.*

PARENT AND CHILD. See *Contract.*

PARTNERSHIP.

Assignment by one Partner—Delivery.—One of several copartners cannot make an assignment of the partnership property to pay the part-

nership debts without the consent of his copartners, if they are present or where they can be consulted: *Petition of Daniels*, 14 R. I.

But one of several copartners can make such an assignment if, being in charge of the property he acts in good faith to meet a crisis in the business, although without the consent of his copartners, when they are absent or where they cannot be consulted: *Id.*

When actual delivery of goods cannot be made, a symbolical delivery suffices: *Id.*

An assignee of property, a part of which was under attachment, took possession of that not attached and demanded that attached. *Held*, that he had done all that was necessary to perfect his title: *Id.*

Bill for Sale of Patent—Use by surviving Partner.—A bill in equity may be maintained by the administrator of a deceased partner against the surviving partner, for a sale of letters patent belonging to the partnership, and for an account of the profits received by the surviving partner from the use of the patent since the dissolution of the partnership: *Freeman* v. *Freeman*, 136 Mass.

Subsequent Incorporation of—Effect on Creditors not Notified.—Where partners have dealt as such with a seller, and after becoming incorporated continue to deal as before, having their bills made in the same way, without giving any notice of their altered condition, they will continue to be liable as partners, unless the seller have knowledge thereof derived from some other source: *Martin* v. *Fewell*, 79 Mo.

Partnership Note for Individual Debt.—The plaintiffs, at St. Louis, sent a reaper to C. K. & Co. (a firm), at Sullivan, Missouri. C. K. & Co., afterward reported by letter, that they had sold the reaper to K., a member of their firm, and sent the note of the firm for the price. It turned out that K. had made the transaction and written the letter wholly without the knowledge of the other members of the firm, and had alone gotten the benefit, but it also appeared that they habitually left the management of the business to K., and permitted him, whenever he wanted goods, to take them and charge them to himself. *Held*, that by their conduct they had brought themselves within the rule that, where one of two innocent persons must suffer by the act of a third party, he shall suffer who has been the cause or occasion of the confidence or credit reposed in such third party, and that they were liable on the note: *Hayner* v. *Crow*, 79 Mo.

PATENT. See *Partnership.*

PUBLIC POLICY. See *Contract; Corporation.*

RAILROAD. See *Common Carrier.*

SUBROGATION.

Mortgage—When Payment entitles to Subrogation.—If a party purchasing land subject to a mortgage, contracts with the mortgagor to pay the mortgage debt, and afterward the mortgagor is compelled to pay it himself, he will be subrogated to the rights of the mortgagee as against such purchaser and any one claiming under him with notice: *Orrick* v. *Durham*, 79 Mo.

SURETY.

Bond of Bank Clerk—Change of Duties.—In an action against the sureties upon a bond, given to a bank, and conditioned for the faithful discharge by C. of "all his duties as clerk of said bank," and against the misappropriation of any of the funds of the bank "which may come under the care or control of said C. as clerk," the evidence showed that C., during the whole term of his employment, performed the duty, to some extent, usually performed by a teller, of paying and receiving money over the counter of the bank. It was found as a fact that "the duties as clerk," contemplated in the bond, did not mean merely the duties of a bookkeeper, but that they embraced the duty of receiving and paying out money at the counter of the bank. *Held*, that the defendants were not entitled to a ruling, as matter of law, that there had been such a change in the duties of the clerk as to discharge them from liability: *Rollstone Nat. Bank* v. *Carleton*, 136 Mass.

Right of Action against Principal.—The payee of a promissory note, given as collateral security for his liability as endorser of another note made by the same person, may maintain an action thereon against the maker, although payment of the other note has not been enforced, and it is still outstanding and unpaid: *Hapgood* v. *Wellington*, 136 Mass.

TRADEMARK.

Colorable Imitation of Label.—A. made and sold "Morse's Syrup of Yellow Dock Root." B. sold a medicinal preparation in bottles having the words, "Dr. Morse's Celebrated Syrup" blown in the glass, and resembling perfectly A.'s bottles in size and shape. The labels used by A. and B. were different, and A.'s bottles were wrapped in a paper cover while B.'s were not. *Held*, that A. was entitled to an injunction against B., and to an account of the profits derived from the use of bottles similar to those used by A.: *Alexander* v. *Morse*, 14 R. I.

A. made his preparation under one trade name and sold it under another. He also advertised it as "sold only in quart bottles," while his bottles, though known among druggists as quart bottles, held substantially less than a quart. *Held*, that this was immaterial: *Id.*

What constitutes a colorable imitation of medicine bottle wrappers and labels: *Id.*

TRIAL.

Additional Charge in absence of Counsel.—After the evidence had closed, the arguments had been completed, and the jury had been charged with the case and retired for consultation, the court took a recess until the next morning, at the same time remarking that he would receive the verdict if it was agreed upon at any time before eleven o'clock that night. The jury not agreeing, the judge, during the recess and before eleven o'clock at night, in the absence of one party and their counsel and without their consent, had the jury brought into the court room and delivered another charge to them on the main points in the case. *Held*, that this was error, and will necessitate a new trial. The announcement of the court was notice that nothing more would be done in the case during the recess than to receive the verdict, and parties had the right to act upon this and absent themselves: *Bryant* v. *Simmons*, 70 or 71 Ga.

TROVER.

Conversion—What amounts to—Agent.—The refusal by one having the chattel of another to deliver it to the owner on demand, is ordinarily *prima facie* evidence of a conversion: *Singer Manunf. Co.* v. *King*, 14 R. I.

A bailee who has received a chattel in good faith from one not the owner may refuse to deliver it to the demanding owner till he has had time to ascertain the ownership: *Id.*

A servant who has received a chattel from his master may retain it till he has consulted his master, but if after consultation he relies on his master's title and refuses to deliver it to the demanding owner, he is guilty of a conversion: *Id.*

An agent received a chattel from a fellow employee, and acting under prior instructions from his principal refused to deliver it to the demanding owner until storage had been paid. The claim for storage was untenable in law. *Held*, that the agent was guilty of conversion: *Id.*

WAGES. See *Assignment.*

WILL.

After-acquired Property.—A statute provided "every person of the age of twenty-one years and of sound mind * * * may * * * devise any lands, tenements or hereditaments acquired subsequently to the execution of his will, provided his intention to devise the same appears by the express terms of his will. A residuary devise was as follows: "All the rest, residue and remainder of my property of every kind, nature and description, and wherever the same may be, I give, devise and bequeath unto my son." *Held*, that the devise did not carry the testator's realty acquired subsequent to the execution of the will: *Church* v. *The Warren Manuf. Co.*, 14 R. I.

Statute preventing Lapse—Legacy prompted by Friendship.—Testamentary gifts prompted by the personal regard of the testator for the legatees were given by a will made while the following statute was in force: "Whenever any child, grandchild or other person, having a devise or bequest of real or personal estate, shall die before the testator, leaving a lineal descendant, such descendant shall take the estate, real or personal, as devisee or legatee, in the same way and manner as such devisee or legatee would have done in case he had survived the testator." The legatees died before the testator, but left lineal descendants. *Held*, that the statute should be interpreted to supplement not to defeat the testator's intention. *Held*, further, that the will must be presumed to have been made in view of the statute. *Held*, further, that the statute applied to the legacies unless it appeared from the will that the testator's intent was not to allow the legacies to go to the descendants under the statute: *Dom. & For. Mis. Soc.* v. *Pell*, 14 R. I.